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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 2765 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M. S. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

DR VIJAYSINH B DODIA

Versus

SAURASHTRA UNIVERITY

Appearance:

MR YS LAKHANI for the Petitioner

MR JR NANAVATI for the Respondent

CORAM : MR.JUSTICE M.S. SHAH

Date of decision: 25/11/97

CAV JUDGEMENT

This petition raises an important and interesting question of interpretation of the provisions of the Saurashtra University Act, 1965 particularly the provisions of Section 25(2) thereof - viz. whether the Dean of a Faculty, who has held the office for two successive terms of 3 years each becomes ineligible for re-election for the third term. Section 25 reads as

under :-

"25 (1). There shall be a Dean of each Faculty who shall be elected by the Faculty from amongst its members, provided that he is a member of the Senate and also a teacher or a Principal.

(2) The Dean shall hold office for a term of three years and shall be eligible for re-election for a further term of three years."

2. The petitioner was elected as the Dean of Medical Faculty of Saurashtra University with effect from May 23, 1991. The said first term came to an end on May 22, 1994. The petitioner was elected as the Dean of Medical Faculty for a further term of three years from May 23, 1994 to May 22, 1997. The petitioner is an elected member of the Senate of the Saurashtra University and the said term is going to expire on May 22, 2002. The elections to the post of Dean of a Faculty are being held from amongst Senate members. The petitioner is, therefore, desirous of contesting for the post of Dean of Medical Faculty for the third consecutive term also. However, in response to the petitioner's letter dated January 15, 1997, the respondent - University submitted a reply that the petitioner is not eligible for re-election for the third term in view of the provisions of Section 25 (2) of the Saurashtra University Act, 1965 (hereinafter referred to as "the Act").

In view of the above stand of the respondent University, the petitioner has filed the present petition for an appropriate writ or direction to restrain the respondent - University from preventing the petitioner from contesting the election for the post of Dean, Medical Faculty of Saurashtra University on the ground that the petitioner has already held the office of the Dean for two terms and that the petitioner cannot contest the election hereafter. The petitioner has further prayed for a declaration that the interpretation placed by the University on the provisions of Section 25 (2) of the Act as per the letter at Annexure "B" to the petition is illegal and unconstitutional.

3. In response to the notice, learned counsel Mr J.R. Nanavati appeared for the respondent University. Since elections for the aforesaid post are not held in view of pendency of this petition, at the request of the learned counsel for the parties, the petition has been

taken up for final disposal and is being disposed of by this judgment.

4. Mr Lakhani for the petitioner urged that the Saurashtra University Act provides for elections for the posts of Vice-Chancellor, Pro-Vice-Chancellor and Deans of Faculties. It is submitted that out of the aforesaid three executive posts, the Act contains a prohibition against re-appointment for third term for the Vice Chancellor and the Pro Vice Chancellor but not against re-election for third term for the Dean of any faculty and, therefore, the legislature did not intend to impose any such prohibition in respect of the office of Dean of a Faculty. In this connection, the provisions of Sections 10(4), 12(2) and 25(2) of the Act are relied upon and they read as under :-

"10 (4).The Vice-Chancellor shall hold office for a term of three years and he shall be eligible for being appointed to that office for a further term of three years only.

12 (2). The Pro-Vice-Chancellor shall hold office for a term of three years and he shall be eligible for reappointment to that office for a further term of three years :

Provided that no person appointed as Pro-Vice-Chancellor shall continue to hold his office as such after he attains the age of 65 years."

(2) The Dean shall hold office for a term of three years and shall be eligible for re-election for a further term of three years."

(emphasis supplied by Mr Lakhani)

It is further submitted that the duties of the Dean of a Faculty are different from the duties of the Vice-Chancellor and the Pro-Vice Chancellor. The latter discharge more administrative functions rather than academic functions whereas the Dean of a Faculty discharges more academic functions than administrative functions and, therefore, the legislature had advisedly not placed any embargo on re-election of the Dean of a Faculty for the third term whereas such restriction has been placed on re-appointment on the posts of

Vice-Chancellor and Pro-Vice Chancellor for more than two terms.

5. On the other hand, Mr J.R. Nanavati, learned counsel for the respondent - University has submitted that the Vice-Chancellor, the Pro-Vice Chancellor and the Deans of Faculties are all executive officers. Nature of their functions and duties is similar and non-use of the word "only" in respect of the post of the Dean of a Faculty does not mean that the same individual will be eligible for holding the post of Dean for the third term. It is submitted that the words "for a further term of three years" mean nothing more than "for one more term of three years" and, therefore, the absence of word "only" does not clinch the issue in favour of the petitioner. It is also submitted that looking to the nature of duties of the Dean of a Faculty, he is required to discharge executive as well as academic functions and that the object of the provision that the Dean of the Faculty should hold the office for only two terms of three years each is to give others a chance so that there is a whiff of fresh air after six years.

It is further submitted that South Gujarat University Act, 1965 was enacted on the same day on which the Saurashtra University Act, 1965 was enacted. Both the said Acts as well as the subsequently enacted Bhavnagar University Act, 1978 are all modelled on the Gujarat University Act, 1949. The relevant provisions of the aforesaid Acts, viz. Section 24 of the Gujarat University Act, Section 25 of the South Gujarat University Act and Section 24 of the Bhavnagar University Act provide that Dean of each Faculty shall be elected by the Faculty from amongst its members provided that he is a member of the Senate and also a teacher or Principal and all the aforesaid three statutes provide that the Dean shall hold office for a term of three years and shall be eligible for being re-elected for a/one further term of 3 years only. It is submitted that non-mention of the word "only" in sub-section (2) of Section 25 of the Saurashtra University Act may be a printer's devil as there was no ground or reason to make the Dean of Faculty in Saurashtra University eligible for the third term, when the Deans of Faculties in other Universities are ineligible for the third term.

6. I have given serious and thoughtful consideration to the rival contentions urged on behalf of the parties. The literal language of the provisions of sub-section (2) of Section 25 of the Saurashtra University Act, as

contrasted with the literal language of the provisions of Section 10 (4) and of Section 12 (2) of the Saurashtra University Act does *prima facie* indicate that the embargo against the same individual holding the office would be applicable only in respect of the posts of Vice-Chancellor and the Pro-Vice Chancellor but the same would not apply to the office of the Dean of a Faculty. Moreover, the same legislature, which enacted the Gujarat University Act, the South Gujarat University Act and the Bhavnagar University Act and prescribed such an express embargo on the same individual being re-elected to the office of Dean beyond two terms, did not think it fit to put such an embargo in respect of the Dean of a Faculty in the Saurashtra University.

On the other hand, it is required to be noted that the provisions of Sections 16(2) and 19(2) of the Saurashtra University Act contain provisions stipulating the term of Senate members and Syndicate members respectively. In each case, the term is of 5 years, but there is no prohibition against re-election for any number of terms. The said provisions read as under :-

"16 (2). The term of office of the elected members and of the members referred to in paragraph (B) in Class II shall be five years.

19 (2). The term of office of the elected members of the Syndicate shall be three years."

It, therefore, appears that there is some force in the argument of Mr Nanavati that the provisions of Section 25 (2) are required to be read on their own without being contrasted with the provisions of sections 10(4) and 12 (2) of the same Act for the posts of Vice-Chancellor and Pro-Vice Chancellor. If the legislature had intended that a person holding the office of the Dean shall be eligible for re-election for any number of terms, the legislature would have stopped with the words "and shall be eligible for re-election" and there was no need for adding the words "for a further term of three years". The words "for a further term of three years" would, therefore, mean "one further term of three years", that is "one more term of three years" and not any number of terms.

7. Apart from the aforesaid interpretation of the statutory provisions, it appears to me that there is also some substance in the argument of Mr Nanavati that in respect of academic offices which are to be occupied by teachers or principals in service, the legislature

intended to provide for change of incumbent of the office of Dean at least after a maximum period of six years so as to bring in new ideas and thoughts because the functions of the Dean of a Faculty are by their very nature such that fresh ideas and thoughts should be welcome. Sub-section (3) of Section 25 enumerates the functions of the Dean of Faculty as under :-

"(3) The Dean shall be the principal executive authority of the Faculty, and shall exercise the following powers and perform the following duties, namely :-

- (i) he shall be the chairman of the Faculty and shall preside at its meetings;
- (ii) he may attend the meeting of any Board of Studies in the Faculty;
- (iii) he shall supervise and coordinate the work of the different Board of Studies under the Faculty;
- (iv) he shall plan and organise seminars, refresher courses, and workshops, pertaining to the subject under the Faculty;
- (v) he shall inspect and guide the University Departments, affiliated colleges, recognised institutions and approved institutions in respect of subjects under the Faculty;
- (vi) he shall be responsible for the due observance of the Statutes, the Ordinances, and the Regulations relating to the Faculty; and
- (vii) he shall recommend to the Syndicate for approval, proposals for the programmes of visiting teachers and for the exchange of teachers.

A perusal of the aforesaid functions does lend support to the argument of Mr Nanavati that when Deans of the Faculties in all other Universities discharge identical functions and are not eligible for re-election for the third term, even absence of the word "only"

cannot be fatal to the interpretation which has been consistently placed by the University on the provisions of Section 25 (2) of the Act to the effect that an individual is not eligible for re-election for the third consecutive term.

8. That is, however, not the end of the matter. It cannot be gainsaid that ultimately it is for the electorate, i.e. the senate members to decide whether they want to have a fresh Dean (i.e. to say a fresh Dean with fresh ideas) or they want to have an experienced Dean. Suppose the electorate try out a new incumbent, but after watching his performance for three years, they are not satisfied with the said incumbent and on the next occasion they do not want to try another inexperienced person, but want to again elect the same experienced hand, who had earlier held the office of Dean for two consecutive terms and who had in the intervening period of three years gone on deputation to another institution and acquired fresh insight into academic administration. Is there anything in the language or scheme of the Act which would prevent the electorate from adopting such a course of action ?

While accepting that absence of the word "only" in Section 25(2) of the Saurashtra University Act does not clothe the incumbent of the office of the Dean of a Faculty with a right to contest election for the third consecutive term, at the same time, significance of absence of the word "only" in the provisions of Section 25(2) of the Saurashtra University Act as contrasted with the relevant provisions of Section 24 of the South Gujarat University ACT and Section 24 of the Bhavnagar University Act cannot be lost sight of while considering the aforesaid question.

In my view, while the language of the provisions of Section 25(2) of the Act supports Mr Nanavati's contention that the incumbent of the office of Dean of a faculty is not eligible for re-election for the third consecutive term, there is nothing in the language or scheme of the Act which provides that after two consecutive terms a person can never contest for the office of Dean of a faculty in future. In other words, while the language of Section 25(2) contains an implied bar against contesting for re-election for the third consecutive term for the office of Dean of a faculty, a person is not debarred from contesting election for the office of Dean in future i.e. if it is not the third consecutive term, but it is another term with break/s of one or more terms after two consecutive terms. This may

not be the position in case of other Universities where the legislature has expressly provided that the Dean shall hold the office for a term of three years and shall be eligible for re-election for a further term of three years only.

10. In view of the aforesaid discussion, it is declared that while the provisions of sub-section (2) of Section 25 of the Saurashtra University Act contain the bar against the incumbent of the office of Dean contesting for election for the third consecutive term, there is no bar against the same person contesting for re-election to the office of the Dean in future.

11. The petition is accordingly disposed of in terms of the aforesaid declaration with no order as to costs.

***** Sd/- M.S. Shah, J.